

Application No. 09/749,059

### REMARKS

Claims 1, 3-11 20 and 22 are pending.

Claims 1, 3, 4, 7, 9, 11, 20 and 22 are rejected.

Claim 10 has been allowed.

Claims 5, 6 and 8 were objected to.

### CLAIMS REJECTIONS – 35 U.S.C. §102

Claims 1, 3, 4, 7, 9, 11, 20 and 22 were rejected under 35 U.S.C. §102(b) as being anticipated by Noda et al (USP 5,785,424). In response, Applicant first notes that Noda is a new ground of rejection and that this is Applicant's first opportunity to respond. More importantly, Applicants note that (1) the Office Action mis-identified the collision surface and operation of the apparatus in Noda and (2) Noda is not enabling and, in fact, teaches away from the present invention.

Specifically, the Office Action identifies feature 8 in Figure 15 of Noda as the "collision surface" in Noda. This is not accurate, and the difference matters greatly. The working surfaces surfaces in Noda are in fact membranes 82 and 83 which are described as "fabrics". There are in fact 2 features labeled "8" in figure 15 of Noda—the arrow to one points to the top of a box assembly while the second arrow points to the leeward side of the box assembly. Features labeled "8" therefore *cannot* be "collision surfaces" within the meaning of the present claims. Working surfaces 82 and 83 in Noda similarly are not collision surfaces as such but instead serve more as baffles to mix and agitate the fluid. The system in Noda is called an "agitator" rather than a "blender", and its function varies accordingly.

The entire text in Noda describing Figure 15 occurs at column 8, lines 43-67. As described, working surfaces 82 and 83 remain "vertical to the rotating plane ..." In other words, none of the surfaces in Noda are designed to pivot or rotate but are to remain in the orientation shown. As for the connectors shown in Figure 15, lines 61-67 describes these as follows:

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On a common upper surface of the cylinders 81 and 81 there is fixed a ring 101 into which a rod-shaped mounting frame 10 is inserted, and secured by a screw 102 to the mounting frame 10, thereby fixing the agitators to the mounting frame 10. *Accordingly, the local agitators are slidably mounted on the rod-shaped mounting frame 10 for allowing their adjustment in the radial direction.*

Noda thus fails to teach any *pivotal* connections between the collision surface and the shank and, in fact, teaches away from such pivotal connection by emphasizing that the flat planes 82 and 83 (the collision surfaces) should remain vertical to the plane of rotation.

Noda is also not enabling as a reference in relation to the claimed invention. As held in Paperless Accounting, Inc. v. Bay Area Rapid Transit Systems, 804 F.2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986): "[A] Section 102(b) reference must sufficiently describe the claimed invention to have placed the public in possession of it...[E]ven if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling..." See also, Akzo N.V. v. U.S.I.T.C., 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986) ("the prior art reference must be enabling"). Since Noda teaches that no pivotal connection is to be made between the agitating assemblies and the shaft, no enablement of pivotal connection has occurred. In all other Figures shown in Noda, the shanks 10 were replaced by a disk, and pivotal connection is not possible in such configurations. As stated explicitly by the text quoted above, the purpose for the shank and connection system shown in Figure 15 is to enable "adjustment in the radial direction."

Thus, Noda does not teach or disclose collision surfaces as in the present invention nor pivotal connections. Noda is additionally non-enabling of the present invention. Accordingly independent claims 1 are allowable over Noda as well as each of the claims dependent from claims 1 and 11.

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**ALLOWABLE SUBJECT MATTER**

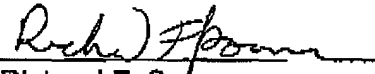
Claim 10 has been allowed over the prior art of record.

Claims 5, 6 and 8 were objected to as being dependent upon a rejected base claim. In response, claims 5 and 6 were amended to independent form with all of the relevant limitations. Claim 8 depends from claim 6. As a result, claims 5, 6 and 8 are now believed to be allowable.

The application and claims are believed to be in a condition for allowance in their present form and which allowance is respectfully requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is hereby authorized to call Applicant's Attorney, Richard Spooner, at Telephone Number (585) 423-5324, Rochester, New York.

Respectfully submitted,

  
Richard F. Spooner  
Attorney for Applicant  
Registration No. 43,928

RFS/pn  
Xerox Corporation  
Xerox Square 20A  
Rochester, New York 14644

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